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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,535	03/15/2004	Sujal M. Patel	RN 25C1 (2635-024-05)	1306
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Graybeal Jackson Haley c/o RealNetworks Graybeal Jackson Haley LLP 155 - 108th Ave NE Suite 350 Bellevue, WA 98004-5973			EXAMINER NGO, NGUYEN HOANG	
			ART UNIT	PAPER NUMBER
			2416	
			MAIL DATE	DELIVERY MODE
			01/27/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/800,535	Applicant(s) PATEL ET AL.	
	Examiner NGUYEN NGO	Art Unit 2416	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

This communication is in response to the RCE of 11/07/0008 and the amendments of 10/07/2008.

1. The amendment filed 10/07/2008 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:
2. Claim 1 states "determining a transmission period associated with a data packet, said transmission period being substantially the time elapsed between sending the data packet and receiving the data packet", as amended. However as stated in the Office Action mailed 8/7/2008, the term transmission period is nowhere to be found in the original disclosure. Similar rationale is applied to the other independent claims.
3. Amended Figure 3 adds the subject matter of a transmission period = clock time – time stamp. However the term transmission period is nowhere to be found in the original disclosure as filed. Thus amendments to the drawing held by the examiner to contain new matter are not entered until question of new matter is settled (See MPEP § 608.04 and § 706.03(o)).

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-52 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1-52 contain subject matter such as transmission period which are nowhere found in the specification.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-4, 6-9, 11-14, 16-18, 20-23, 25, 27, 30, 33, 34, 36, 37, 40-42, 44, 45, 48, 50-52 are rejected under 35 U.S.C. 102(e) as being anticipated by Ravikanth (US 6327274), hereinafter referred to as Ravikanth.

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Regarding claim 1, 6, 11, 16, 20, 27, 37, 45, Ravikanth discloses a method of determining network conditions, the method comprising:

determining a transmission period associated with a data packet (time at which packet N is received by a host machine of a receiver D), said transmission period being substantially the time elapsed between sending the data packet and receiving the data packet (received clock time which is substantially the time elapsed between sending the data packet and receiving the data packet);

subtracting a basetime (time at which packet N is sent by a host machine of a sender S, col3 lines 50-55) from the transmission period to determine a transmission latency (delay experienced by packet N, measured by the destination node D is $\text{Delay} = T(\text{received}) - T(\text{sent})$, col4 lines 45-48); and

in response to the transmission latency being less than 0, modifying the base time (when latency is not less than 0, no modifying of base time needed).

Regarding claim 2, 12, 21, 23, 25, 33, 34, 36, 41, 42, 44, Ravikanth discloses the method of claim 1, wherein determining the transmission period includes:

reading a timestamp included in the data packet, wherein the timestamp includes the time that the data packet was sent (timestamps that are carried in the packet sent from sender to receiver, col4 lines 1-5 and figure 1); and

modifying the time of the timestamp to account for any clock skew (col4 lines 51-60).

Regarding claim 3, 7, 8, 13, 17, 22, Ravikanth discloses the method of Claim 1, additionally comprising reporting to a software module the transmission latency (col2 lines 41-58).

Regarding claim 4, 9, 14, 18, Ravikanth discloses the method of Claim 1, wherein the data packets is one of a plurality of data packets that collectively comprise a portion of a media presentation rendered to a user (data packets such as the ones used by multimedia applications, col5 lines 4-10).

Regarding claim 30, 40, 48, Ravikanth discloses the method of claim 25, wherein a timestamp comprises a clock value (time at which packet was sent, col6 lines 35-40 and figure 1).

Regarding claim 50-52, Ravekanth discloses the method of claim 1, further comprising determining the base time using a transmission period of one or more previously sent data packets (using a stream of consecutive packets from the source node to the destination node, col6 lines 40-45).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 5, 8, 10, 15, 19, are rejected under 35 U.S.C. 103(a) as being unpatentable over by Ravikanth (US 6327274), hereinafter referred to as Ravikanth.

Regarding claim 5, 10, 15, 19, Ravikanth fails to specifically disclose wherein the plurality of data packets are received via a modem. Ravikanth however discloses of a second node for receiving the plurality of packets as seen in figure 1. It would have thus been obvious to have the destination node (108) of figure 1 be a modem, as it is

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well known in the art to have destination nodes be modems in order to ensure proper communication to a user.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NGUYEN NGO whose telephone number is (571)272-8398. The examiner can normally be reached on Monday-Friday 7am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Firmin Backer can be reached on (571)272-6703. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner, Art Unit 2416